

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

LUIS ROLDAN-CORTES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 05-2200 (JAF)

(Crim. No. 97-284)

**OPINION AND ORDER**

Before the court is Luis Roldán-Cortés' ("Roldán") 28 U.S.C. § 2255 (1994 & Supp. 2004) federal habeas corpus petition arguing that his attorney's failure to investigate and defend his case violated his constitutional right to effective assistance of counsel. Docket Document Nos. 1, 13.

**I.**

**Factual and Procedural Synopsis**

Many of the facts of this case have been laid out in detail in the First Circuit's opinion responding to Petitioner's direct appeal of his criminal convictions. United States v. Rodriguez-Marrero, 390 F.3d 1 (1st Cir. 2004). Nonetheless, we summarize this case's history anew to the extent necessary to create a narrative relevant to the ineffective assistance of counsel claim presently before us. We derive the following factual history from the parties' filings, as well as from the First Circuit's opinion. See id.; Docket Document Nos. 1, 6, 13.

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1 Defendant Roldán was a member of a drug conspiracy responsible  
2 for smuggling large amounts of cocaine and marijuana into  
3 southwestern Puerto Rico. Roldán's participation included:  
4 negotiating drug shipments; loading, unloading and captaining boats  
5 carrying drugs; coordinating security and look-outs; and inventorying  
6 and selling drugs to small distributors. Roldán also assisted in the  
7 murder of another member of the conspiracy, government informant  
8 James Martin-Rodríguez ("Martin"). To facilitate Martin's killing,  
9 Roldán met with co-defendants David Rafael Ramos-Rivera ("Ramos") and  
10 Aníbal Pagán-Cerezo ("Pagán") at the Ducos Housing Project in  
11 Aguadilla to identify Martin as the target of the murder.  
12 Immediately after conferring with Roldán, Pagán and Ramos riddled  
13 Martin's body with seventeen bullets.

14 The government indicted Roldán on July 18, 2000, in its Second  
15 Superseding Indictment, three years after an initial indictment of  
16 conspiracy members on December 17, 1997. The charges against Roldán  
17 included Count 1, conspiracy to possess cocaine and marijuana with  
18 intent to distribute, and Counts 7, 8, and 9, aiding and abetting  
19 Martin's murder. Roldán hired Efren T. Irizarry-Colón ("Irizarry")  
20 to represent him.

21 Only three of the twelve indicted conspiracy members went to  
22 trial, which began September 7, 2000. Irizarry immediately informed  
23 the court that he was unprepared to represent Roldán and requested a  
24 continuance. After issuing previous warnings that it would not

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1 postpone this multi-defendant, complex trial, the court denied the  
2 motion. On October 10, 2000, the jury convicted all three defendants  
3 on all counts. On March 18, 2002, the court sentenced Roldán to four  
4 life sentences. Roldán subsequently filed three motions for new  
5 trials based on newly-discovered evidence, which the district court  
6 denied. Roldán then filed an appeal on several grounds, including  
7 newly-discovered evidence. The First Circuit affirmed his conviction  
8 on all counts.

9 In his appeal, Roldán claimed that the district court's denial  
10 of his motion for a continuance unconstitutionally deprived him of  
11 the effective assistance of counsel. The First Circuit found that,  
12 despite Irizarry's insistence that he was not prepared for trial, he  
13 performed at the same level as the other defendants' attorneys.  
14 Rodriguez-Marrero, 390 F.3d at 23. Significantly, the court found  
15 that Irizarry was able to cross-examine the government's chief  
16 witnesses and that no prejudice resulted from Irizarry's failure to  
17 locate a one-page police report that Roldán flagged as potentially  
18 leading to exculpatory evidence. Id.

19 On November 15, 2005, Roldán filed a habeas corpus petition  
20 alleging ineffective assistance of counsel on six grounds. Roldán  
21 asserts that Irizarry failed to: (1) review the government's  
22 discovery; (2) make a timely motion for a continuance;  
23 (3) investigate leads or present an affirmative defense;  
24 (4) communicate with petitioner; (5) obtain a written plea offer; and

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1 (6) subordinate his pecuniary interests and competently represent  
2 Petitioner. Docket Document No. 1-1.

3 The government filed a response to Petitioner's motion on  
4 January 30, 2006, Docket Document No. 6, and Petitioner replied on  
5 June 22, 2006. Docket Document No. 13-1.

6 **II.**

7 **Framework and Relief Under Section 2255**

8 A federal district court has jurisdiction to entertain a § 2255  
9 motion only where the petitioner is currently in custody under the  
10 sentence of a federal court. 28 U.S.C. § 2255. Section 2255  
11 provides four grounds under which a federal prisoner looking to  
12 challenge the imposition or length of his sentence may seek relief:  
13 (1) the court imposed the sentence in violation of the Constitution  
14 or laws of the United States; (2) the court was without jurisdiction  
15 to impose such a sentence; (3) the sentence was in excess of the  
16 maximum time authorized by law; and (4) the sentence is otherwise  
17 subject to collateral attack. See id. Should a court find any of  
18 these errors, it "shall vacate and set the judgment aside and shall  
19 discharge the prisoner or re-sentence him or grant a new trial or  
20 correct the sentence as may appear appropriate." Id. Claims which do  
21 not allege constitutional or jurisdictional errors may be brought  
22 under § 2255 only if the claimed error would result in a complete  
23 miscarriage of justice. See Knight v. United States, 37 F.3d 769,  
24 772 (1st Cir. 1994) (citing Hill v. United States, 368 U.S. 424, 428

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1 (1962)). Section 2255 "does not grant jurisdiction over a post-  
2 conviction claim attacking the execution, rather than the imposition  
3 or illegality of the sentence." United States v. DiRusso, 535 F.2d  
4 673, 674 (1st Cir. 1976).

### 5 III.

#### 6 Discussion

7 The Supreme Court established a two-part standard for  
8 ineffective assistance of counsel claims in Strickland v. Washington,  
9 466 U.S. 668 (1984). First, a defendant must show the deficiency of  
10 counsel's performance and second, a defendant must demonstrate a  
11 reasonable probability that, but for counsel's actions, the result of  
12 the proceeding would have been different. Id. at 686-96. The court  
13 may dismiss based on a failure to show prejudice without reaching the  
14 performance prong of the Strickland test. Id. at 697 ("[T]here is no  
15 reason for a court . . . to address both components of the inquiry if  
16 the defendant makes an insufficient showing on one.").

17 Petitioner first claims that Irizarry's failure to review  
18 discovery materials provided by the government led to a  
19 "significantly different" trial than would have occurred had Irizarry  
20 actually read those documents. Docket Document No. 1-1. Petitioner  
21 does not, however, support this claim with an explanation of how or  
22 why the outcome would have differed. See id. Without more, we  
23 cannot determine the effect that more thorough preparation might have  
24 had. Nor can we, as petitioner urges us to do, find ineffective

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1 assistance of counsel based on Kimmelman v. Morrison, where the Court  
2 affirmed a finding of constitutionally-deficient assistance based on  
3 counsel's failure to object to the admission of prejudicial evidence.  
4 477 U.S. 383, 390 (1966) (finding evidence might "have tipped the  
5 balance" in defendant's favor). No similarly prejudicial errors or  
6 omissions exist in the present case.

7 Second, Petitioner claims that Irizarry's failure to make a  
8 timely motion for continuance constituted ineffective assistance of  
9 counsel. Docket Document No. 1-1. In response to Petitioner's claim  
10 on appeal that the district court's denial of his motion for  
11 continuance deprived him of due process, the First Circuit found that  
12 no prejudice resulted from the denial. Rodriguez-Marrero, 390 F.3d  
13 at 24. We apply the First Circuit's finding to the case before us  
14 and find that Petitioner suffered no prejudice from counsel's delay.

15 Third, Petitioner reiterates his claim that newly-discovered  
16 evidence contains potentially exculpatory material that Irizarry  
17 could have unearthed through diligent investigation and used to  
18 present an affirmative defense. Docket Document No. 1-1. To support  
19 this claim, Petitioner offers affidavits from two of his co-  
20 defendants, Raúl Santodomingo-Romero ("Santodomingo") and Pagán,  
21 denying Roldán's involvement in the murder, and from residents of the  
22 Ducos housing project claiming that they did not see Roldán that day.  
23 Docket Document No. 1-3, Exs. B, C, D, E, F1, and F2.

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1           Petitioner first introduced statements from Santodomingo and  
2           Pagán to the district court in a motion for a new trial on April 23,  
3           2001. Rodriguez-Marrero, 390 F.3d at 28. The district court denied  
4           Petitioner's claim that these pieces of newly-discovered evidence  
5           warranted a new trial. Id. Reviewing the ruling, the First Circuit  
6           found no error in the district court's belief that "as a convicted  
7           drug-dealing kingpin, Santodomingo would have little credibility with  
8           jurors." Id. at 29. The First Circuit also affirmed the district  
9           court's decision not to grant a new trial based on Pagán's  
10          uncorroborated written statements, sent to Petitioner while Pagán was  
11          a fugitive from justice.

12          Petitioner made two more motions for a new trial, offering  
13          another unsworn statement of Pagán. Id. at 31. The district court  
14          found the statement inconsistent with Pagán's earlier letter and  
15          denied the motion based on Pagán's "very limited credibility." Id.  
16          The First Circuit found no error in this decision. Id. We agree  
17          with the First Circuit that the statements of Petitioner's co-  
18          defendants, if introduced, would not have altered the result of the  
19          trial.

20          As for the affidavits from a smattering of housing project  
21          residents testifying that they did not see Roldán that day, or that  
22          they saw him later in the day, we find that they would have had  
23          little relevance to the jury in this case for two reasons. Docket

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1     Document No. 1-3 Exs. C,D,E.<sup>1</sup>     First, they come from random  
2     individuals who likely did not see most of the people present in the  
3     housing project that day and, second, because their evidentiary value  
4     is clearly outweighed by much more direct evidence against Roldán in  
5     the record.

6             Petitioner next claims that Irizarry's failure to communicate  
7     his inability to devote sufficient time and effort to Roldán's case  
8     constituted ineffective assistance of counsel.     Docket Document  
9     No. 1-1.     It is unclear once again, however, how the result of  
10    Roldán's trial might have differed had Irizarry given Roldán a more  
11    accurate picture of his commitment. While Roldán might have retained  
12    different counsel, we have already determined above that neither a  
13    continuance nor the presentation of the additional evidence uncovered  
14    pursuant to this ineffective assistance of counsel claim would have  
15    altered the outcome. Because no prejudice resulted from Irizarry's  
16    failure to warn Roldán that he might not live up to his expectations,  
17    we do not find ineffective assistance on these grounds.

18            Fifth, Petitioner claims that Irizarry's failure to obtain a  
19    written plea offer from the government constituted ineffective  
20    assistance of counsel.     Docket Document No. 1-1.     An attorney has a  
21    duty to discuss plea offers with clients; this duty does not,

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<sup>1</sup> Petitioner offered Exhibit D in Spanish only. While we have taken into account the substance of this affidavit, we remind Petitioner that Spanish documents offered to this court must be accompanied by an English translation.



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1       however, extend to actually securing an offer.   United States v.  
2       Gonzalez-Vazquez, 219 F.3d 37, 41 (1st Cir. 2000); Boria v. Keane, 99  
3       F.3d 492, 496 (1st Cir. 1996).

4       Sixth, Petitioner claims that his alleged disagreement with  
5       Irizarry over fees led Irizarry unconstitutionally to neglect to put  
6       forth his full effort on this case.   Docket Document No. 1-4. As  
7       evidence of Irizarry's lack of commitment, Petitioner points to:  
8       (1) Irizarry's attempt to withdraw from representation over the fee  
9       dispute; and (2) Irizarry's alleged forgery of his signature on a  
10      document asking this court to appoint new counsel.   Docket Document  
11     No. 13-1. While these allegations raise legitimate concerns, they do  
12     nothing to establish the prejudice necessary to satisfy Strickland.  
13     See Bucuvalas v. United States, 98 F.3d 652, 656 (1st Cir. 1996) (to  
14     prove ineffective assistance based on a conflict of interest, a  
15     petitioner must show that: (1) his attorney could have pursued a  
16     plausible alternative defense strategy; and (2) his attorney failed  
17     to pursue this tactic due to other loyalties or interests). We  
18     additionally observe that the First Circuit presumes that "a lawyer  
19     will ordinarily subordinate his pecuniary interests and honor his  
20     primary professional responsibility to his client" absent evidence to  
21     the contrary.   Id. (quoting United States v. DiCarlo, 575 F.2d 952,  
22     957 (1st Circuit 1978)).

23      Petitioner cites to Cuyler v. Sullivan to support his claim that  
24      his alleged fee dispute with Irizarry, and Irizarry's consequent lack

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1 of commitment, constituted a violation of his Sixth Amendment right  
2 to effective assistance of counsel. 446 U.S. 335, 350 (1980). We  
3 fail to see the connection. In Cuyler, the Supreme Court found that  
4 a defendant's Sixth Amendment right to effective assistance of  
5 counsel may be violated by an attorney's divided loyalty when he  
6 represents multiple co-defendants in the same case. The present  
7 case, by contrast, does not deal with the clear conflict of interest  
8 created when an attorney represents multiple co-defendants, and the  
9 First Circuit has explicitly cautioned against extending the Cuyler  
10 presumption to all disagreements between attorneys and clients.  
11 Mota-Santana, 391 F.3d at 46.

12 **IV.**

13 **Conclusion**

14 In accordance with the foregoing, we **DENY** Petitioner's motion  
15 for a writ of habeas corpus on the basis of ineffective assistance of  
16 counsel. Docket Document No. 1. Pursuant to Rule 4(b) of the rules  
17 governing § 2255 proceedings, we find summary dismissal is in order  
18 because it plainly appears from the record that Petitioner is not  
19 entitled to § 2255 relief.

20 **IT IS SO ORDERED.**

21 San Juan, Puerto Rico, this 10<sup>th</sup> day of October, 2006.

22 S/José Antonio Fusté  
23 JOSE ANTONIO FUSTE  
24 Chief U. S. District Judge